

EXHIBIT “G”

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A P P E A R A N C E S

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24 ALSO PRESENT: Ralph Stussi

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7 PLAINTIFF'S WITNESSES:

PAGES

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9 PHILLIP JOHNSON

10 Direct examination by Mr. Hogan

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Cross-examination by Mr. Smith

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12 MARK DILLION

Direct examination by Mr. Hogan

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13 Cross-examination by Mr. Smith

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Redirect examination by Mr. Hogan

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15 RALPH STUSSI

Direct examination by Mr. Hogan

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18 EXHIBITS:

MARKED

RECEIVED

19 Plaintiff's Exhibit 4

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20 Defendant's Exhibit 244

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1 Mr. Berry's code.

2 Q. Now did you have reference to Mr. Berry's
3 code?

4 A. I did not. I never did, no, not before that
5 day I saw it. In fact, I've never seen the code,
6 because even when I found I had a copy of it in our
7 offices I disposed of it without looking at it.

8 Q. Now did you ever have anyone from Fleming
9 come to you to investigate whether there was any
10 willful infringement occurring at Fleming?

11 A. Any what kind of infringement? I'm sorry.

12 Q. Any kind of software infringement regarding
13 Mr. Berry's copyrights?

14 A. Did anyone come to me and what?

15 Q. Ask you if you'd done anything to infringe
16 his copyrights?

17 A. No, not that I recall. I mean, once the
18 litigation started I guess we were wondering, well,
19 what's happening and what did we do and, you know,
20 some of those kind of issues came up. I'm not sure if
21 I'm answering your question.

22 Q. Now I'd like to talk about how Hawaiian
23 Express accesses the freight control database at
24 Fleming. Are you familiar with a company known as
25 Hawaiian Express?

1 A. Yes, I am.

2 Q. And do they access the database remotely
3 using PC Anywhere?

4 A. Yes, they do.

5 Q. How long have they done that?

6 A. Well, they've done that since they took over
7 API's terminals in California.

8 Q. Is it your testimony, sir, that it wasn't
9 Fleming people that were originally using --

10 A. Well, that's our -- that's correct. Fleming
11 -- the history of that is that API used to have
12 terminals in California. Their terminal personnel
13 used to access the database via PC Anywhere from each
14 of their terminals.

15 Q. And isn't it true, sir, that that was the way
16 it was done right after the end of API and the
17 beginning of Fleming running its own logistics?

18 A. Well, the next thing that happened was that
19 API ceased operations. So the API personnel became
20 Fleming personnel. They moved to Hawaiian Express
21 terminals because the API terminals were no longer
22 going to be functioning and they accessed the database
23 from there as Fleming employees.

24 At some point those employees began receiving
25 their paycheck from Hawaiian Express but the

1 operations they performed and the way they performed
2 it was always the same.

3 Q. Right. But Hawaiian Express is not Fleming.
4 It is not a subsidiary, to your understanding, of
5 Fleming. They're not considered Fleming employees at
6 least when you associate with them, if you do?

7 A. Okay.

8 Q. Is that a fair statement?

9 A. That sounds fair.

10 Q. It's a separate company?

11 A. It's a separate company.

12 Q. And would it be fair to say that it was a
13 competitor of API, does the same kind of work?

14 A. Well, not at that time. API was defunct.

15 Q. Right. API shutdown. But at the time when
16 API shut down this was a competitor taking over its
17 relationship with Fleming, correct?

18 THE COURT: How can you be a competitor
19 when API goes out of business?

20 Q. Well, at least they were doing the same kind
21 of work, is that a fair statement, sir? They were
22 both freight logistics companies?

23 A. Yeah. When API existed it was a freight
24 logistics company. And Hawaiian Express was and is a
25 freight logistics company.

1 Q. Right. And when they were allowed to access
2 the network, were they not able to see at least the
3 visual screens that Mr. Berry had created when they
4 were accessing it remotely from California?

5 A. Yes.

6 Q. And --

7 A. They were looking at a representation of his
8 screens.

9 Q. A replica, is that a fair statement?

10 A. A representation, I would say.

11 Q. Right. But they were actually using the
12 computer that was at Fleming at the time, though,
13 remotely?

14 A. Yes, remotely.

15 Q. Were you aware that that was not permitted --
16 a permitted use in the EULA, Exhibit 53?

17 THE COURT: He said he never read it.

18 A. Well, I didn't read it in detail. And Mr.
19 Berry had detailed for us, in this August -- I believe
20 it was August of 1999 meeting with all of the API
21 personnel who had worked with Mr. Berry for years and
22 with the Fleming officers who were going to, from some
23 point in the near future, be responsible for those
24 personnel and their operations, Mr. Berry --

25 THE COURT: Just a minute. We'll

1 recognize the presence of this class. What class is
2 this?

3 (Brief in-court recess taken.)

4 THE COURT: Go ahead, Mr. Hogan.

5 Q. (By Mr. Hogan) Mr. Dillon, going back to the
6 changes in the Freight Control System, the access
7 database, sir, again, your testimony was that none of
8 those were changes in reports, correct?

9 A. Going back to the access database?

10 Q. The changes in the screens, the buttons, the
11 things that you had testified to --

12 A. Yes.

13 Q. Those are not changes in reports; is that
14 correct, sir?

15 A. Well, depends on what you mean by reports.
16 You know, we had -- I don't know how to discuss it.
17 But some consider the screens are, like we talked
18 about earlier, they can be considered a dynamic
19 report. It's a view of the data.

20 Q. But isn't it true that the querying of the
21 database that you used and API had used before Crystal
22 Reports in order to generate business documents for
23 Fleming to use as reports in their business?

24 A. I'm sorry. I missed something there. Can
25 you repeat the question?